

May 23, 1990

The Honorable Russell Blair
Senator, Sixteenth District
The Fifteenth Legislature
State of Hawaii
State Capitol, Room 215
Honolulu, Hawaii 96813

Dear Senator Blair:

Re: Unfiled Senate Committee Report

This is in response to your letter, dated April 24, 1990, requesting an opinion about public disclosure of a legislative committee report that was not submitted to the Senate Clerk for filing because a majority of members on the committee considering the measure did not endorse the committee report.

ISSUE PRESENTED

Whether the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), requires public disclosure of a legislative committee report that was not submitted to the Senate Clerk for filing because a majority of the legislative committee did not endorse the committee report.

BRIEF ANSWER

The UIPA expressly provides an exception from its general mandate of public disclosure for "[i]nchoate and draft working papers of legislative committees including . . . unfiled committee reports." Haw. Rev. Stat. . 92F-13(5) (Supp. 1989). When a committee report is not submitted to the Senate Clerk for filing because a majority of the committee members did not endorse the committee report, the committee report is an unfiled committee report and, therefore, is not required to be disclosed under the exception in section 92F-13(5), Hawaii Revised Statutes.

FACTS

In considering a legislative measure in the State Legislature, the legislative committee to which the measure is referred holds a public hearing on the measure and conducts its decision-making on the measure in a public session. If the legislative committee decides to report a legislative measure out of committee, it does so by setting forth its recommendations about the measure in a committee report. The legislative committee must file its committee report with the clerk of the legislative house to which the committee belongs. The committee report filed with the clerk is then duplicated, and copies are provided to the members of the respective house for subsequent decision-making on the measure and are also made available to the public.

According to the rules of the State House and Senate, the recommendations set forth in a committee report must reflect a decision on the measure supported by a majority of members on the committee. Therefore, the committee report must be signed by a majority of the committee members as endorsement of the committee report's recommendations. Members on the committee may expressly oppose the recommendations set forth in the committee report by writing "I do not concur," or "IDNC," in place of their signatures. In addition, members may be excused from signing the committee report because they are absent. If a majority of the committee does not endorse the committee report due to the number of committee members who do not concur or are excused, the committee report is not filed with the clerk. Consequently, the measure is not released from the committee for decision-making on the house floor.

You raised the issue regarding whether the UIPA requires public disclosure of a committee report which was not filed with the Senate Clerk because a majority of the members on the committee considering the legislative measure did not endorse the committee report.

DISCUSSION

The UIPA sets forth the general rule that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1989). The UIPA sets forth five exceptions to this general rule, one of which is directly relevant to the issue raised. In particular,

section 92F-13(5), Hawaii Revised Statutes, provides in pertinent part:

.92F-13 Government records; exceptions to general rule. This chapter shall not require disclosure of:

. . . .

(5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.

Haw. Rev. Stat. . 92F-13(5) (Supp. 1989) (emphasis added). Unfiled committee reports are, therefore, expressly included in the category of "inchoate and draft working papers of legislative committees" covered by this UIPA exception.

One could argue that committee reports that have been prepared in final form and actually circulated among the committee members for their review and endorsement are no longer "inchoate and draft working papers." Yet, by expressly listing "unfiled committee reports" in section 92F-13(5), Hawaii Revised Statutes, the Legislature intended that committee reports be considered "inchoate and draft working papers" until they are actually filed with the clerk of the house. Any other conclusion would contradict the plain meaning of the unambiguous statutory language in this exception. See Haw. Rev. Stat. . 1-14 (1985).

Consequently, so long as a committee report is not filed with the clerk of the respective legislative house, it is not required to be publicly disclosed under section 92F-13(5), Hawaii Revised Statutes. Pursuant to this exception to the UIPA's general mandate of public access, a legislative committee is not required to disclose a committee report that was not filed because a majority of the committee members did not endorse the committee report.

CONCLUSION

When a committee report is not submitted for filing with the Senate Clerk because a majority of the committee members did not

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endorse the committee report, the committee report is not required to be disclosed under section 92F-13(5), Hawaii Revised Statutes. Specifically, section 92F-13(5), Hawaii Revised Statutes, sets forth an exception to the UIPA's general mandate of public access for "[i]nchoate and draft working papers of legislative committees including . . . unfiled committee reports." Since the committee report that was not endorsed by a committee majority is not filed, the committee is not required to publicly disclose the committee report under this exception.

Very truly yours,

Lorna J. Loo
Staff Attorney

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APPROVED:

Kathleen A. Callaghan
Director